

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE LITIGATION

MDL No. 1456
Master File No. 01-12257-PBS

**NON-PARTY EMPIRE BLUE CROSS BLUE SHIELD'S
ASSENTED TO MOTION FOR LEAVE TO FILE UNDER SEAL**

Pursuant to Local Rule 7.2, Empire Blue Cross Blue Shield ("Empire"), a non-party in this action, hereby moves this Court for leave to file under seal Exhibits D and E to its Reply Memorandum of Law in Further Support of its Motion to Quash Subpoena Seeking Deposition Testimony and for a Protective Order ("Reply").

As set forth in paragraph 2 of the Declaration of Theodore M. Hess-Mahan submitted herewith, Exhibits D and E attached to its Reply contain transcripts of the deposition testimony of Christopher Eddy, who is Empire's regional manager for provider relations in the upstate and mid-Hudson regions of New York, and Linda Monteforte, Empire's director of pharmacy, regarding confidential and proprietary information relating to Empire's reimbursement for physician-administered drugs and its confidential business relationships with, inter alia, subscribers, doctors and hospitals. Empire has designated the testimony of its deposition witnesses as "HIGHLY CONFIDENTIAL" pursuant to the Protective Order entered in this case on December 13, 2002 (the "Protective Order").

The parties's counsel have conferred and defendants have assented to this motion.

WHEREFORE, Empire respectfully requests that this Court enter an Order to allow Empire to file Exhibits D and E to its Reply under seal and to impound them until further order of this Court, at which time Empire's counsel will retrieve the impounded materials.

Dated: September 20, 2005

EMPIRE BLUE CROSS BLUE SHIELD

By its attorneys,

/s/Theodore M. Hess-Mahan

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CERTIFICATION OF COMPLIANCE WITH LOCAL RULE 7.1(A)(2)

I hereby certify that the parties' counsel conferred in a good faith effort to narrow or resolve the issues raised in this motion. Defendants have assented to this motion.

/s/Theodore M. Hess-Mahan

Theodore M. Hess-Mahan